Joseph and Pauline Merrill

v.

Town of Northwood

Docket No.: 11145-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of $179,350 (land $138,350; buildings $41,000) on a 32,132, square-foot lot with a house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:
(1) the Property has no lake frontage or access, and has road frontage on a road not maintained by the Town;

(2) the low level of the land results in a drainage easement that runs the length of the Property, as well as two culverts;

(3) two appraisals were prepared as of April 1, 1991 -- one estimated a $42,000 value for the land only and the other estimated an $81,000 value for the entire Property and recommended a $115,200 assessment;

(4) the lots had to be consolidated to gain septic-system approval from the State to replace the existing, 46-year-old septic system;

(5) the assessment increased $40,000 after the Town's revaluation and the Taxpayers' consolidation of the lots, and is disproportionate compared to similar properties in the Town;

(6) larger lots have lower assessments; and

(7) seasonal property is not worth more than year-round property because it can only be used a portion of the year.

The Town argued the assessment was proper because:

(1) the Taxpayers' $42,000, land-only appraisal was flawed because the comparables were vacant lots near water;

(2) the $81,000 appraisal was flawed because the comparables contained newer homes in different parts of the Town;

(3) the consolidated lots have greater utility than they did as individual lots, and therefore, greater value;

(4) only the DRA's 1991 equalization ratio should be relied on because it is applied consistently throughout the Town -- the Taxpayers' ratio was derived at by averaging only a few select properties; and

(5) a 1990 sales study performed by DRA indicated the assessments were within an acceptable range of sales prices.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the proper assessment should be $160,100. The inspector increased the Town's excess frontage and undeveloped depreciation factors on the land value. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $147,450 (land $106,450; building $41,000). In arriving at this assessment, the board makes the following findings.

Little weight is given to the Taxpayers' first appraisal that valued only the land because:

1) in making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).;

2) the comparable lots dealt with undeveloped land versus the developed nature of the subject Property; no adjustment was made for the value added in

developing a lot; and

3) the comparables do not have the lake proximity and view the Taxpayers' lot does; while the Taxpayers do not have deeded rights to Northwood Lake, neither party submitted evidence as to whether the Taxpayers, due to their Property's location, can become members of an association and gain access by the "association's beach area" (see Town's brief Exhibit 7); regardless, the appraisal did not adjust for the view and lake orientation of the Property.

Similarly, the second appraisal is given little weight because:
1) no adjustment was made for the Property's view and lake orientation as discussed in #3 above; and
2) the proportionality study is not valid because: a) the sample size is too small; and b) there is no indication of the dates of sales, verification of sales, etc.

However, in reviewing the assessment-record cards and the ownership history of the Property, the board rules the Town's value, after legal consolidation, is overstated. This Property appears to straddle two distinct valuation neighborhoods established by the Town during the reassessment - land influenced by its exposure to Route 4 and land influenced by its proximity to Northwood Lake. For Route 4, the Town established a base rate of $600 per-front-foot, and, if not commercially used, a 50% reduction was applied. For land influenced by its orientation towards Northwood Lake, but not fronting on the lake, the Town established a base rate of $800 per-front-foot. While as

separate legal lots, the Route 4 rates were assessed to Lots 15, 40, 41 and 42, while the Northwood Lake rates were assessed to Lots 16 and 17. Also while separate lots, topography and shape adjustments of x75 to x80 were

applied to the lots, along with standard excess frontage and undeveloped factors. After consolidation, all land value was calculated with the higher Northwood Lake factor, a topography adjustment of x90, and no excess and undeveloped factors.

As a result of the assemblage and legal consolidation of the lots by planning board approval dated September 20, 1990, there was value added to the Property as a whole because it was now of a size to allow for installation of an approved septic system and to allow it to be sold with the potential of a year-round property. (See Town's brief Exhibit #8). However, at the same time, there was some diminished value due to the separate, grandfathered nonconforming lots no longer being able to be transferred separately. Exactly how much these two value influences offset each other, the board is unable to determine based on the evidence submitted.

However, it is clear that the highest and best use after consolidation is as a single recreational property with the potential for year-round conversion. This finding is supported by the actions of the Taxpayers, the orientation of the improvements to the lake, and the reasonable buffer between the buildings and Route 4.

The board rules that the most reasonable way to assess the Property recognizing its new highest and best use, the lot shape, and its topographical features is to apply a topography/shape factor of x80 and the excess frontage

and undeveloped factors consistently used by the Town in the reassessment.

In summary, the assessment is calculated as follows:

Land:	$147,600 (basic value)	x 80 (topo/ shape)	x 90 (excess frontage)	x 95 (undeveloped depreciation)	= $100,950
				Well and septic	= $ 5,500
				Building	= $ 41,000
				TOTAL ASSESSMENT	**= $147,450**

If the taxes have been paid, the amount paid on the value in excess of $147,450 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Dennis P. Vachon, Esq., Agent for Joseph and Pauline Merrill, Taxpayers; and Chairman, Selectmen of Northwood.

Dated: January 21, 1994

Lynn M. Wheeler, Deputy Clerk